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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Alliance Concrete Concepts Inc.

Serial No. 76149957

Malcolm L. Moore of Moore & Hansen for Alliance Concrete Concepts Inc.

Vivian Micznik First, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Chapman, Rogers and Drost, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On October 19, 2000, Alliance Concrete Concepts Inc. (a Minnesota corporation) filed an application to register the mark STONESKIRT on the Principal Register for goods identified as "composite blocks for skirting a mobile home" in International Class 19. The application is based on applicant's claimed date of first use and first use in commerce of April 28, 2000.

The Examining Attorney required that applicant amend the identification of goods to indicate their material composition (suggesting, if accurate: "non-metal composite blocks for skirting a mobile home"); and refused registration on the ground that applicant's mark, STONESKIRT, is merely descriptive of applicant's goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

Applicant ultimately amended the identification of goods to read as follows: "molded, non-metal composite blocks for forming a decorative wall around the periphery of a mobile home," which was accepted by the Examining Attorney.

When the refusal to register the mark as merely descriptive was made final, applicant appealed to this Board, and concurrently therewith filed a request for reconsideration, which was denied by the Examining Attorney.

Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested by applicant.

The test for determining whether a mark is merely descriptive is whether the term or phrase immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature

of the goods or services in connection with which it is used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.* 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). That is, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

The Examining Attorney's position is summarized as follows in her brief (p. 4):

The goods have the appearance of being stone. When used on the applicant's modular blocks for building walls to skirt mobile homes, consumers will immediately understand the 'STONESKIRT'

mark to refer to a characteristic and use of the goods, namely, skirting that has the appearance of stone.

...

Although the applicant's goods are not attached to the mobile home, they are used to form a border, or outer edge, of the mobile home. As set forth in applicant's identification, the goods form a decorative wall *around the periphery* of a mobile home. Therefore, the goods are used to create a "skirt" around a mobile home. (Italics emphasis in original.)

Further, she contends that "the combination of the words STONE and SKIRT into 'STONESKIRT' creates a compound term with a meaning identical to that which common usage would ascribe to those individual words as a compound term." (Brief, p. 3).

In support of her position, the Examining Attorney relies on, inter alia, the following: (i) The American Heritage Dictionary (Third Edition 1992) definitions of "skirt" as "An outer edge; a border or margin," and "stone" as "Concreted earthy or mineral matter; rock"; (ii) printouts of excerpted stories retrieved from the Nexis database and printouts of pages from a few Internet web sites, all to show that "'stone skirt' is a term used in the construction industry" (Final Office action, p. 2); and (iii) applicant's specimen of record and its statement (response to first Office action, p. 2) that applicant's

products have "a roughened surface so as to provide a natural, stone-like appearance on their exposed faces."

Some examples of the Nexis database and Internet evidence are reproduced below:

Headline: 10 New Units in Potomac Get Two Builders' Custom Touch  
...These dramatic Colonial-style homes will feature concrete siding with a brick or stone skirt, a side-loading three-car garage, a spacious wooden deck with stairs to the second level of the house, "The Washington Times," April 17, 1998;

Headline: Hoosier Company Gets City Hall Contract  
...In fact, to also help get the bid down to a manageable figure, some items were deleted from the building plan that included a stone skirt and arch return, a decorative fence, and basement partitions. "South Bend Tribune," January 26, 1997;

Headline: Sequoia National Park...  
...The buildings are constructed of cedar, with river-stone skirts, and thus blend in well with their surroundings... "The Orange County Register," April 30, 2000;

The Mobile Home Store  
Description: Roomy, Very energy efficient, All electric w/Central Air/Heat, Shingle roof, Faux Stone Skirt, Huge bathtub w/Skylight, Appliances. [www.themobilehomestore.com](http://www.themobilehomestore.com);  
and

Metroland New Homes  
Laurel View Homes, Inc.  
...the brick or stone skirt with vinyl siding..., [www.metrolandnewhomes.com](http://www.metrolandnewhomes.com).

Applicant essentially argues that "STONE" is not descriptive of its goods which are molded blocks formed from a concrete composite, and therefore the mark, in its entirety, is not descriptive. Applicant acknowledges that "the term 'SKIRT' might arguably be generic and descriptive." (Applicant's response filed September 17, 2001, p. 2.)<sup>1</sup> Specifically, applicant contends that the Examining Attorney has improperly dissected the mark into its component words; that applicant's "arbitrary and coined mark STONESKIRT, when considered properly in its entirety, does not describe the molded composite block product" (brief, p. 8)<sup>2</sup>; that applicant's goods are man-made blocks,

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<sup>1</sup> Applicant offered to disclaim the word "skirt." However, compound word marks are considered unitary, and the Examining Attorney would not require a disclaimer. See TMEP §1215.05(a)(3d ed. 2002).

<sup>2</sup> In its brief on appeal (pp. 8-9, applicant, for the first time, referred to five third-party registrations, and including a typed listing thereof as an attachment to applicant's brief. The Examining Attorney objected to the evidence as untimely; and her objection is sustained. The record in an application should be complete prior to the filing of an appeal, and additional evidence filed after appeal will ordinarily be given no consideration by the Board. See Trademark Rule 2.142(d). Moreover, mere typed listings of third-party registrations are not an appropriate way to enter such material into the record, and the Board does not take judicial notice of registrations in the USPTO. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992); *Cities Service Company v. WMF of America, Inc.*, 199 USPQ 493 (TTAB 1978); and *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). Accordingly, applicant's references to third-party registrations have not been considered in making our decision.

not naturally occurring irregularly-shaped stones; and that the mark is suggestive rather than descriptive of a feature of the goods.

We agree with the Examining Attorney that the asserted mark STONESKIRT immediately describes a characteristic or feature and purpose of the goods on which applicant uses its mark. The term immediately informs consumers that applicant's goods, "molded, non-metal composite blocks for forming a decorative wall around the periphery of a mobile home," consist of faux stone blocks which go around the periphery of a mobile home. Applicant has stated in the record, and the specimen shows, that applicant's molded composite blocks are made to appear as roughened stone. The fact that applicant's molded composite blocks are not naturally formed stones is not persuasive. Rather, the fact that applicant intentionally makes its composite blocks to appear as stone, is sufficient to find the term STONESKIRT merely descriptive of composite blocks formed to look like stone, which form a decorative wall (or skirt) around the base of a mobile home.

When the evidence is viewed in its entirety, we are of the opinion the term STONESKIRT is no more than a combination of two merely descriptive terms, with the composite mark remaining merely descriptive. See In re

Gould Paper Corporation, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (SCREENWIPE held generic for wipes that clean computer and television screens). That is, consumers for applicant's molded composite blocks for skirting a mobile home would readily understand that the term STONESKIRT refers to faux-stone blocks used to form a decorative wall (skirt) around the mobile home. As such, the term immediately and without conjecture or speculation, describes a significant characteristic or feature and purpose of applicant's goods.

The term does not create an incongruous, creative, or unique mark. To the contrary, STONESKIRT, considered as a whole, when applied to applicant's goods, is merely descriptive of a significant characteristic or feature (the stone like appearance) and purpose (skirting a mobile home) of the goods. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE merely descriptive for potpourri); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (FIRSTIER (in stylized form) merely descriptive for banking services); *In re Cryomedical Sciences Inc.*, 32 USPQ2d 1377 (TTAB 1994) (SMARTPROBE merely descriptive of disposable cryosurgical probes); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of facsimile



terminals employing electrophoretic displays); and In re Truckwriters Inc., 219 USPQ 1227 (TTAB 1983), aff'd unpub'd Appeal No. 84-689 (Fed. Cir., November 1, 1984) (requirement for a disclaimer of the merely descriptive term "writers" for insurance agency services affirmed).

**Decision:** The refusal to register on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed.